IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3810 of 2004

M/S.SHIV ENGINEERING WORKS
V/S
STATE & ORS.

Mr. ANIL KAVIRAJ, for the appellant / petitioner

Date of Order : 8.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

This writ has been filed against the order, Annexure-22, being dated 18.12.2003 passed by the District Collector directing recovery of the subsidy along with interests on account of the petitioner having committed breach of the agreement. As appears from the documents, Annexure-1 and 2 that the petitioner had commissioned the factory in the year 1995 as a manufacturing unit, and was granted subsidy. However, it appears that the petitioner did not continue production for the requisite period of time.

It is contended by the learned counsel for the petitioner that the petitioner was not given any opportunity of hearing before passing of the order, Annexure-22, and there is nothing to show, as to what was the breach of the agreement, which attracted the recalling of the subsidy, and therefore, the order, Annexure-22 is bad.

From perusal of para 14 of the writ petition, it transpires that according to the petitioner, the proceedings were initiated under P.D.R. Act, and on 10.7.2003, show cause notice along with copy of Demand Notice was ordered to be issued, and the matter was adjourned from time to time, and lastly, on 18.12.2003, the order, Annexure-22 was passed due to non-compliance of the terms and conditions of the agreement. Then according to the pleading taken in ground (I) of the writ petition, it transpires that the petitioner is aware of the fact that the subsidy is being recalled on account of the industry having not remained in

production for the stipulated period of five years. In this background, I also find that in para 6 of the writ petition it has been alleged that the petitioner got electricity connection of 20 H.P. on 24.4.96. Then, it is alleged in para 7 that the petitioner had applied for loan for machinery, and setting up of industry, and has produced the documents, Annexures-4, 5, 6 & 7 purporting to be the receipts for certain amounts deposited by the petitioner in the process of processing the loan, and these documents are of the year 2001 and 2002. Then the petitioner has pleaded in para 8 that the petitioner unit purchased more without subsidy, and to make better production, and for that, the petitioner has produced certain bills for purchasing of certain machineries. These bills are also of the year 1997 and 1999. Then in para 11, the petitioner has pleaded that the petitioner had started its works since 1996, in which respect, he has produced the letters, Annexures-16 & 17 issued by M/s.Shrinath Granites and M/s. Anand Industries. A look at Annexures-16 and 17 shows that thereby M/s.Shrinath Granites had purchased machinery (manufacturing articles of industry based) worth Rs.10,50,000/-, and vide Annexure-17, M/s. Anand Industries had purchased machineries worth Rs.86,000/-. This Annexure-17 is dated 16.1.97. The bills produced by the petitioner for purchase of the machinery, being Annexures-8, 9, 10, 11, etc., show that the total purchase made by the petitioner is worth less than Rs.2,00,000/-, as Annexure-8 is worth Rs.1,13,854/-, Annexure-9 is worth Rs.1510/-, Annexure-10 is worth Rs.30,535/-, Annexure-11 is worth Rs.1358/-. In these circumstances, it doesn't bear out that the petitioner has commenced the production in the industry so as to effect the sale of its product vide Annexures-16 and 17.

On the other hand, a look at Annexures-13, 14, and 15, being the alleged annual reports show that the petitioner had shown the plant and machinery to be worth Rs.21,33,670 in the year 1998-99, and the total staff employed consisted of one skilled, and three unskilled persons, and the remark has been given as “due to depression no orders and am facing financial crisis..”. Likewise, Annexure-14 being for the year 1999-2000 also, same strength of staff is maintained, and the remark is given as “due to disparity at oil mills closed, repairing work also very difficult. Facing working capital crisis”. Then Annexure-15 is for the year 2000-01 maintaining the same staff, and the remark given is “In 2001-2002 we will self fabricated hydraulic press and then in 2002-2003 will diversity into pressing of wast paper catering to paper mill. We

specialize in paper related machines..”.

Thus, this over all comprehension of the state of affairs make it clear that the petitioner does not appear to have remained in production for the requisite period of time as required by subsidy scheme.

In addition, it may be mentioned here that even according to the petitioner, the proceedings had been initiated against him under the P.D.R. Act, and after notice was ordered to be issued, the order Annexure-22 has been passed. A bare perusal of various provisions of P.D.R. Act shows that there-under, the petitioner had number of alternative remedies against that order including that of filing of a suit under Section 20. Thus, even apart from what has been observed by me above on the merits of the sustainability of demand, I am not inclined to entertain the present writ petition.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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